

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: John Neuhoff, III, O.D.)
 Personal Property Account No. 088383) Davidson County
 Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$137,310	\$41,193

On July 11, 2007, the taxpayer filed an appeal with the State Board of Equalization ("State Board"). As indicated on the appeal form, the property in question was not appealed to the Metropolitan Board of Equalization ("county board") during its regular 2007 session.

The undersigned administrative judge conducted a hearing of this matter on September 18, 2007 in Nashville. In attendance at the hearing were the appellant John Neuhoff III, O.D. and Assessor's representative Kenneth Vinson.

Findings of Fact and Conclusions of Law

The subject property is used (or held for use) in the operation of Dr. Neuhoff's "Vision 1st" office, located at 68 White Bridge Road in Nashville.

In 2006, the Assessor's office did not receive a completed tangible personal property schedule for this business location. Hence, pursuant to Tenn. Code Ann. section 67-5-903(c), the Assessor made a "forced assessment" of on the account that was based on an estimated market value of \$31,789.¹

A similar sequence of events occurred in the tax year under appeal; however, the amount of the forced assessment was considerably higher. An assessment change notice meeting the specifications of Tenn. Code Ann. section 67-5-508(a)(3) was mailed to Dr. Neuhoﬀ's oﬃce on May 18, 2007. This notice included a statement of the taxpayer's right to appeal the increased assessment to the county board until June 15, 2007.

Dr. Neuhoﬀ ascribed his failure to return the 2007 “Schedule B” to a “misunderstanding” of advice from his accountant. As explained in an attachment to the appeal form:

He (the accountant) had instructed that since there were no additions or deletions to the amounts preprinted on the form he did not need to do anything to the form. He meant that we should

¹In tax year 2005, based apparently on the information reported by the taxpayer, the Assessor had valued the subject account at \$101,371.

sign and mail but our office misinterpreted that to mean we did not need to file since there were no changes.

Yet the threshold issue in this case is not whether the taxpayer's failure to file the mandatory personal property schedule was excusable. Rather, it must be determined whether the State Board may accept this appeal despite the taxpayer's failure to make complaint to the county board within the allotted time. Generally, except in the event of inadequate notice of an assessment, an appeal to the local board of equalization is a jurisdictional prerequisite for an appeal to the State Board. See Tenn. Code Ann. sections 67-5-1401 and 1412(b); Tenn. Atty. Gen. Op. 92-62 (October 8, 1992). But Tenn. Code Ann. section 67-5-1412(e) (as amended by Chapter No. 133 of the Public Acts of 2007) affords a taxpayer the right to a hearing to establish "reasonable cause" for a direct or untimely complaint to this agency.

Historically, the Assessment Appeals Commission (appointed by the State Board pursuant to Tenn. Code Ann. section 67-5-1502) has construed this reasonable cause statute to require "a showing of circumstances beyond the taxpayer's reasonable control that prevent the taxpayer from appealing to the county board." Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), p. 2. Nothing in the record of this proceeding indicates the existence of any disability, illness, emergency, or other such impediment. As the Commission pointedly proclaimed in the case of Transit Plastic Extrusions, Inc. (Lewis County, Tax Years 1990 & 1991, Final Decision and Order, June 29, 1993), "[a] taxpayer who has been properly notified of an assessment change...cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business or lack of awareness of the manner or necessity of appeal." *Id.* at p. 2.

In light of this authoritative precedent, the administrative judge is compelled to conclude that the State Board lacks the power to change the disputed assessment.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order";** or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of October, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: John Neuhoff, III, O.D., Vision 1st
Kenneth Vinson, Davidson County Assessor's Office
Jo Ann North, Davidson County Assessor of Property

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